



## 22 CFR Part 42

[Public Notice: 12224]

RIN 1400-AE83

### Immigrant Visas

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Department of State (“Department”) is amending its regulation governing immigrant visas by removing the section which allows a consular officer to conduct an informal evaluation of the family members of an immigrant visa applicant to identify potential grounds of ineligibility. The existing regulation was promulgated in 1952, at a time when a consular officer could more readily assess a family member’s potential qualification for a visa without a formal visa application. Assessing eligibility for an immigrant visa is now a more complex task and not one which can be accomplished accurately with an informal evaluation.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Claire Kelly, Office of Visa Services, Bureau of Consular Affairs, Department of State; telephone (202) 485-7586, VisaRegs@state.gov.

### SUPPLEMENTARY INFORMATION:

The Department published a notice of proposed rulemaking, Public Notice 11604 at 88 FR 16384 (Mar. 17, 2023) (hereafter “proposed rule”), with a request for comments, proposing to amend Part 42 of Title 22 of the Code of Federal Regulations. The rule will eliminate 22 CFR 42.68 in its entirety. The regulatory amendment was discussed in detail in the proposed rule, and that discussion is adopted by reference in this final rule. The Department received two responsive comments, both in support of eliminating 22 CFR 42.68. The Department is now

promulgating a final rule with no changes from the proposed rule. This rule results in no change for applicants, as the authority granted by 22 CFR 42.68 was no longer used by consular officers.<sup>1</sup>

## **ANALYSIS OF COMMENTS:**

The proposed rule was published in the *Federal Register* on March 17, 2023. The comment period closed May 16, 2023. The Department received two responsive comments, both in favor of the proposed elimination of 22 CFR 42.68, and one non-responsive comment.

One of the two responsive comments advocated for replacing 22 CFR 42.68 with “supportive and accessible eligibility screenings for noncitizens seeking visas,” while the other comment only expressed its support for the proposed elimination. The Department has considered these comments. Considering the complexity required to evaluate a noncitizen’s eligibility for a visa, and limited resources to reliably assess eligibility absent a visa application, the Department is unable to offer any eligibility screenings. Noncitizens who wish to receive a nonimmigrant or immigrant visa must formally apply for a visa to allow a consular officer to assess their eligibility for the visa.

## **REGULATORY FINDINGS**

### *A. Administrative Procedure Act*

As this rule involves amending visa policy, which is a foreign affairs function of the United States, it is exempt from both the delayed effective date and notice and comment requirements of 5 U.S.C. 553 per subsection (a)(1). Notwithstanding the applicability of the foreign affairs exception to this rule, the Department, for its own benefit, sought public comment on the proposed elimination of 22 CFR 42.68. *See, e.g., Hoctor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 171-72 (7th Cir. 1996) (observing that there is nothing in the APA that forbids an agency’s use of notice-and-comment procedures even if not required under the APA, and that courts should

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<sup>1</sup> See the proposed rule for further discussion.

attach no weight to an agency's varied approaches involving similar rules). Though this rule is not subject to 5 U.S.C. 553(d), the Department is also choosing to delay the effective date of this rule for 30 days.

*B. Regulatory Flexibility Act*

As this rulemaking is not required to be published for notice and comment under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act. Nonetheless, as this rule eliminates a currently unused authority, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Congressional Review Act*

This rule is not a major rule as defined by the Congressional Review Act (5 U.S.C. 801 et seq.). This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and import markets.

*D. Executive Orders 12866, 13563, and 14094*

Notwithstanding that the policies of the Secretary of State in exercising their authority to conduct international affairs through the granting or refusal of visas to foreign nationals is a foreign affairs function, the Department has submitted this rule to OIRA for review and OIRA has deemed this rule to be not significant. The Department has also considered this final rule in light of E.O. 13563 and E.O. 14094 and affirms that this rule is consistent with the guidance therein.

As noted in the NPRM, the Visa Office consulted with management in the immigrant visa units of five of the largest-volume immigrant visa processing posts: Ciudad Juarez, Manila, Santo Domingo, Mumbai, and Dhaka. Each of the five posts reported they do not provide this service. Given that these five posts process 32 percent of the immigrant visas worldwide, and

they have no information regarding the provision of this service, we are confident that eliminating this regulation will not result in significant impacts.

*E. Executive Order 13175*

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*F. Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

*G. Other*

The Department has also considered this rule under the Unfunded Mandates Reform Act of 1995 and Executive Orders 12372, 13132, and 13272 and affirms this rule is consistent with the applicable mandates or guidance therein.

**LIST OF SUBJECTS in 22 CFR Part 42**

Immigration, Passports, Visas.

Accordingly, for the reasons set forth in the preamble, 22 CFR 42 is amended as follows:

**PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE  
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

**§ 42.68 [Removed and reserved]**

2. Remove and reserve § 42.68.

**Julie M. Stufft,**

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*Consular Affairs,*

*Department of State.*

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